IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

No. 96-568

JOSEPH ONCALE, PETITIONER

v.

SUNDOWNER OFFSHORE SERVICES, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States and the Equal Employment Opportunity Commission (EEOC) as amici curiae, respectfully moves that oral argument on behalf of petitioner be divided, and that the government be allowed 10 minutes of argument time. The government filed a brief supporting petitioner.

1. This case arises out of an action brought by petitioner under Title VII of the Civil Rights Act of 1964, 42 U.S.C. et seq., which prohibits discrimination in employment because of an individual's sex. Petitioner filed the suit against respondents, his former employer Sundowner Offshore Services, Inc., as well as his former supervisor, and two co-workers, all of whom are male,

as is petitioner. Petitioner alleged that respondents had subjected him to sexual discrimination and harassment in employment practices, and consequently forced him to resign, in violation of Title VII. He alleged that he had been subjected to both a discriminatorily hostile work environment and to quid pro quo harassment because of his sex.

The court of appeals summarily affirmed the district court's entry of summary judgment for respondents, in light of binding circuit precedent that "bar[red] all same-sex sexual harassment claims" under Title VII. Pet. App. 5-6. In the view of the courts below, no claim of sexual-harassment sex discrimination in violation of Title VII that is brought by a person against alleged harassers of the same sex is covered by Title VII. The court of appeals' ruling thereby substantially affects the statutory scheme fashioned by Congress to govern claims of employment discrimination because of sex.

2. The United States and the EEOC have a strong interest in the resolution of the question presented. The EEOC was established by Congress to interpret and enforce Title VII. It has an interest in the effectiveness of the entire congressional plan for eradicating discrimination because of sex, including questions that arise under Title VII in private actions brought by employees. Such private suits serve an important role in accomplishing the purposes of Title VII. Cf. McKennon v. Nashville Banner Publishing Co., 513 U.S. 352, 358 (1995). In response to the Court's invitation, the Acting Solicitor General

filed a brief on behalf of the EEOC and the United States as amicus curiae at the petition stage of this case.

The EEOC has long recognized that harassment on the basis of sex is a violation of Title VII. In 1981, the EEOC issued an opinion reaffirming its "long standing position * * * that Title VII does not cover discrimination which occurs because of an individual's sexual preference," but it recognized that claims of same-sex harassment could be shown to be because of an individual's sex. EEOC Dec. No. 81-16 (Jan. 1981), reprinted in EEOC Dec. (CCH Employment Practices Guide) ¶ 6756, at 4796 (1983 ed.); see also 2 EEOC Comp. Man. § 615.2(b)(3) (Oct. 1981).

Title VII's prohibition against discrimination because of sex extends to federal agencies. 42 U.S.C. 2000e-16. Thus, the United States, as an employer, is bound by the Court's interpretation of the scope of Title VII and has an interest in ensuring that Title VII is correctly interpreted to serve its intended purposes.

For the foregoing reasons, we believe that oral presentation of the government's views would be of material assistance to the Court. The Solicitor General has participated in the oral argument in this Court in a number of recent cases involving the interpretation of Title VII, including Robinson v. Shell Oil Co., 117 S. Ct. 843 (1997); Walters v. Metropolitan Educational Enterprises, Inc., 117 S. Ct. 660 (1997), and the Court's last sexual harassment case under Title VII, Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993). Although we have attempted on a number

of occasions to contact counsel for petitioner, counsel has not informed us whether he would agree to cede argument time to the government.

Respectfully submitted.

SETH P. WAXMAN
Acting Solicitor General

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